

**AGREEMENT FOR SERVICES BETWEEN
THE COUNTY OF SAN LUIS OBISPO AND DATAWORKS PLUS, LLC.**

This Agreement, is made and entered into this _____ day of, _____, 2014, by and between the County of San Luis Obispo, political subdivision of the State of California(hereinafter referred to as "County"), and DataWorks Plus, LLC.(hereinafter referred to as "Consultant").

WITNESSETH

WHEREAS, the County needs to obtain certain professional, technical and/or specialized services of an independent Consultant to assist the County in providing a specialized service; and

WHEREAS, Consultant possesses the requisite skill, training, qualifications, and experience to render such services called for under this Agreement;

NOW THEREFORE, the parties mutually agree as follows:

SECTION 1. SCOPE OF SERVICES. Consultant shall perform those services as specified in detail in Exhibit "A," entitled "SCOPE OF SERVICES" which is attached hereto and incorporated herein.

SECTION 2. IMPLEMENTATION PLAN. An implementation Plan will be mutually agreed upon by COUNTY'S designated Project Manager and the Consultant's designated Project Manager. The Implementation Plan will include process for installation and configuration of the Hardware and Software included in this Agreement. An Acceptance Test Plan will also be mutually agreed upon by County's designated Project Manager and the Consultant's designated Project Manager. The Acceptance Test Plan will include process for testing and system's acceptance of the Software included in this Agreement. This Agreement is contingent upon the parties mutually agreement to an Implementation Plan and Acceptance Test; if the parties cannot come to agreement on these matters, this Agreement will have no force and effect. The terms of the Implementation Plan and Acceptance Test are incorporated herein by reference as though fully set forth.

SECTION 3. INTENTIONALLY LEFT BLANK.

SECTION 4. COMPENSATION. The compensation to be paid to Consultant including both payment for professional services and reimbursable expenses as well as the rate and schedule of payment are set forth in Exhibit "B" entitled "COMPENSATION," which is attached hereto and incorporated herein by reference.

SECTION 5. BILLING . Except as otherwise provided in Exhibit "B", each month Consultant shall furnish to the County a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures. County shall remit payment for the services rendered within thirty (30) days of receipt of Consultant's statement.

SECTION 6. INDEPENDENT CONSULTANT. Consultant shall be deemed to be an independent Consultant of County. Nothing in this contract shall be construed as creating an employer-employee relationship, partnership or a joint venture relationship. Nothing in this contract authorizes or permits the County to exercise direction or control over the professional manner in which Consultant provides services. Consultant's services shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant understands and agrees that Consultant and its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, or medical insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee.

SECTION 7. NON-ASSIGNMENT OF CONTRACT. Inasmuch as this Agreement is intended to secure the specialized services of the Consultant, Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of County, and any attempt by Consultant to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and volunteers from and against all claims, demands, damages, liabilities, loss, costs, and expense (including attorney's fees and costs of litigation) of every nature arising out of or in connection with Consultant's performance or attempted performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the County.

SECTION 9. INSURANCE.

A. MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

1. **Commercial General Liability Insurance Policy (“CGL”).** This policy shall include coverage at least as broad as set forth in Insurance Services Office (herein “ISO”) Commercial General Liability coverage. (Occurrence Form CG 0001) with policy limits not less than the following:

- \$1,000,000 each occurrence (combined single limit);
- \$1,000,000 for personal injury liability;
- \$1,000,000 aggregate for products-completed operations; and
- \$1,000,000 general aggregate.

The general aggregate limits shall apply separately to Consultant’s work under this Agreement.

2. **Business Automobile Liability Policy (“BAL”).** This policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 “Any Auto” (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million (\$1,000,000) dollars for each accident, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. Consultant shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

3. **Workers’ Compensation And Employers’ Liability Insurance Policy (“WC/EL”).** This policy shall include at least the following coverages and policy limits:

- a. Workers’ Compensation insurance as required by the laws of the laws of the State of California; and
- b. Employer’s Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein “BI”); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI disease.

4. **Professional Liability Insurance Policy (“PL”).** This policy shall cover damages, liabilities, and costs incurred as a result of Consultant’s professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). Consultant shall notify

the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

B. DEDUCTIBLES AND SELF-INSURANCE RETENTIONS. Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Consultant and approved by the County before work is begun pursuant to this Agreement. At the option of the County, Consultant shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

C. ENDORSEMENTS. All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below.

1. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);

2. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insureds with respect to all liabilities arising out of Consultant's performance of work under this Agreement (CGL & BAL);

3. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL)

4. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL & BAL);

5. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) days prior to the effective date of such reduction or cancellation to County at the address set forth below (CGL, BAL, WC /EL & PL);

6. Consultant and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and

7. Deductibles and self-insured retentions must be declared (All Policies).

D. ABSENCE OF INSURANCE COVERAGE. County may direct Consultant to immediately cease all activities with respect to this Agreement if it determines that Consultant fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Consultant's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to Consultant.

E. PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION. Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, Consultant, or each of Consultant's insurance brokers or companies, shall provide County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for Consultant shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to the County as identified in Section 21.

SECTION 10. NON-DISCRIMINATION. Consultant shall not discriminate, in any way, against any person on the basis of age, sex, race, color, creed, national origin or disability in connection with or related to the performance of this Agreement, and shall comply with the provision on Consultant agreements contained in Presidential Executive Order Number 11246 as amended by Executive Order 11375 and as supplemented in Department of Labor regulation (41 CFR Part 60).

SECTION 11. TERMINATION.

A. County and Consultant shall have the right to terminate this Agreement, without cause, by giving not less than thirty (30) days written notice of termination.

B. If Consultant fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, County may terminate this Agreement immediately upon written notice.

C. The Sheriff is empowered to terminate this Agreement on behalf of County.

D. In the event of termination, Consultant shall deliver to County copies of all work papers, schedules, reports and other work performed by Consultant and upon receipt thereof,

Consultant shall be paid in full for services performed and reimbursable expenses incurred to the date of termination.

SECTION 12. COMPLIANCE WITH LAWS. Consultant warrants that Consultant and each of the personnel employed or otherwise retained by Consultant are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Consultant shall obtain and maintain a County of San Luis Obispo business license during the term of this Agreement.

SECTION 13. GOVERNING LAW. County and Consultant agree that the law governing this Agreement shall be that of the State of California. Any suit brought by either party against the other arising out of the performance of this Agreement shall be filed and maintained in the Superior Court of the County of San Luis Obispo.

SECTION 14. PRIOR AGREEMENTS AND AMENDMENTS. This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment.

SECTION 15. CONFIDENTIAL INFORMATION. All data, documents, discussions or other information developed or received by or for Consultant in performance of this Agreement are confidential and not to be disclosed to any person except as authorized by the Sheriff or his designee, or as required by law.

SECTION 16. OWNERSHIP OF MATERIALS. All reports, documents or other materials developed or received by Consultant or any other person engaged directly by Consultant to perform the services required hereunder shall be and remain the property of County without restriction or limitation upon their use.

SECTION 17. COVENANT AGAINST CONTINGENT FEES. The Consultant covenants that Consultant has not employed or retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure the Agreement, and that Consultant has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fees, commissions, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement, for breach or violation of this covenant, the County shall have the right to annul this Agreement without liability,

or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage fee, gift, or contingency.

SECTION 18. WAIVER. Waiver by a party of any one or more of the conditions of performance under this Agreement shall not be construed as waiver of any other condition of performance under this Agreement.

SECTION 19. CONFLICT OF INTEREST.

A. A Consultant shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement.

B. Contractor acknowledges that Contractor is aware of and understands the provisions of Sections 1090 et seq. and 87100 et seq. of the Government Code, which relate to conflict of interest of public officers and employees. Contractor certifies that Contractor is unaware of any financial or economic interest of any public officer or employee of the County relating to this Contract. Contractor agrees to comply with applicable requirements of Government Code section 87100 et seq. during the term of this Contract, including the filing of a statement of economic interest if required by any applicable County Conflict of Interest Code of the contracting department, which shall be filed in accordance with the filing requirements of the California Fair Political Practices Commission and regulations promulgated thereunder.

SECTION 20. AUDIT BOOKS AND RECORDS.

A. Consultant shall keep complete and accurate records for the services performed pursuant to this Contract and any records required by law or government regulation and shall make such records available to County upon request.

B. Consultant shall assure the confidentiality of any records that are required by law to be so maintained.

C. Consultant shall make available to County, its authorized agents, officers and employees, for examination any and all ledgers and books of account, invoices, vouchers, canceled checks and other records or documents evidencing or related to the expenditures and disbursements charged to the County, and shall furnish to County, its authorized agents and employees, such other evidence or information as County may require with respect to any such expense or disbursement charged by Consultant.

D. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. Consultant shall safeguard the accounting records and supporting documentation.

SECTION 21. NOTICE. All notices shall be personally served or mailed, postage prepaid, to the following addresses, or to such other address as may be designated by written notice by the parties:

COUNTY	CONSULTANT
San Luis Obispo County Sheriff's Office 1585 Kansas Ave. San Luis Obispo, CA 93405	DataWorks Plus, Inc. 728 North Pleasantburg Drive Greenville, SC 29607


SECTION 22. FORCE MAJEURE. Neither the County nor the Consultant shall be deemed in default in the performance of the terms of this contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without limitation: acts of God; rulings or decisions by municipal, Federal, States or other governmental bodies; any laws or regulations of such municipal, Federal, States or other governmental bodies; or any catastrophe resulting from flood fire, explosion, or other causes beyond the control of the defaulting party. Any party delayed by force majeure shall as soon as reasonably possible give the other party written notice of the delay. The party delayed shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Contract.

SECTION 23. STATE AUDIT. Pursuant to California Government Code section 8546.7, every county contract involving the expenditure of funds in excess of ten thousand dollars (\$10,000) is subject to examination and audit of the State Auditor for a period of three years after final payment under the contract.

WITNESS THE EXECUTION HEREOF, on the day and year first hereinabove written.

COUNTY OF SAN LUIS OBISPO

BY: _____
Chairman of the Board of Supervisors

CONSULTANT

BY: _____
Todd Pastorini,
General Manager

ATTEST:


BY: _____

County Clerk

**APPROVED AS TO FORM
AND LEGAL EFFECT:**

RITA L. NEAL

County Counsel

BY: 

Deputy County Counsel

EXHIBIT "A"

SCOPE OF SERVICES Services

Consolidation of Existing Digital PhotoManager™ stations with existing LiveScan Decks

Statement of Work

Digital PhotoManager™ Proposal

Digital PhotoManager™ Mugshot Server– each includes:

- Customer Provided Virtualized Server
- Digital PhotoManager™ Server Edition**
- WebWorks Plus™ for 10 Concurrent Users
- WebWorks Express™ for 25 Concurrent Users
- Installation & Training

Digital PhotoManager™ Server Edition ¹	\$10,000.00
SQL Server for Digital PhotoManager™ for 4 Cores	\$3,000.00
WebWorks Plus™ 10 Concurrent user (lineups)	\$20,000.00
WebWorks Express™ for 6 Concurrent Users (no lineup)	\$7,000.00
Installation & Training	\$5,000.00
Dynamic Imaging Image and Data Conversion	\$5,000.00
Base System Grand Total	\$50,000.00

**Customer to provide SQL Server

¹ All software to be downloaded remotely from South Carolina making the software exempt from sales tax.

Additional engineering effort by DataWorks Plus beyond the scope of the standard product will be charged at our standard rate of \$220 per hour, plus any related travel or administrative expenses.

Upon expiration of warranty for the above equipment, Standard Maintenance for the first year will be available at 12% of the system list price, and is renewable annually thereafter at then current pricing. Standard maintenance support includes 8 x 5 Monday through Friday with next day onsite support and includes repair or replacement of failed parts and software maintenance. Premium Plus Maintenance will be offered for 14% of the system list price for upgraded 24 x 7 coverage.

DataWorks Plus believes in ensuring that your data is secure. As such, all DataWorks Plus employees must pass an FBI background check as part of our hiring process. DataWorks Plus understands that agencies have their own background processes and will comply with standard vendor background checks for employees either participating in the install or on-going maintenance. Standard vendor background checks include fingerprints, employment history, local, state and/or FBI checks. Extensive background processes beyond what is considered a standard check will be at the sole financial responsibility of the agency and should be coordinated with DataWorks Plus for scheduling and billing.

DataWorks Plus appreciates the opportunity to present this proposal, which will be valid for 90 days, after which availability and prices are subject to change. To confirm your requisition, please submit your purchase order within this time frame. Prices are exclusive of any and all state, or local taxes, or other fees or levies.

EXHIBIT "B"

COMPENSATION

Prices are exclusive of any and all state, or local taxes, or other fees or levies. This quote is subject to the following conditions:

1. 25%-Paid after IMPLENTATION PLAN accepted- PLAN should be complete within 30 calendar days of contract signing.

25%-Paid after Software Download

25%-After interfaces and conversion complete

25%- 30 days after acceptance
2. Payment net thirty (30) days from receipt of invoice.